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November 18, 2002

VIA FACSIMILE
AND HAND DELIVERY

Mr. Jeff S. Jordan
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2002 NOV 18 P 6:02

Re: MUR 5305

Dear Mr. Jordan:

This letter constitutes the response of Dario Herrera and Herrera for Congress (collectively, "Respondents") to the Complaint the Commission received in the above matter alleging that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"). The allegations in the Complaint are baseless, purely speculative, and highly inflammatory, and the Commission should decline to take further action and close this matter.

The Complaint principally involves circumstances relating to Dario Herrera's 2002 candidacy for the United States Congress. The complainant claims, without providing any factual support, that contributions the employees of Rhodes Design and Development Corporation ("RDDC") made to Herrera for Congress during 2001 and 2002 were illegal contributions in the name of another. Compl. at 4. However, Respondents have committed no violation of the Federal Election Campaign Act (the "Act") or its implementing rules.

First, Respondents vigorously dispute the complainant's assertion that either Herrera for Congress or Dario Herrera accepted contributions made in the name of another. The Complaint's allegation that the either RDDC or James Rhodes actually paid for the employees' contributions amounts to no more than unsupported speculation.

The Act and the Commission's implementing rules prohibit any person from making a contribution in the name of another person. 2 U.S.C. § 441f (2001); 11 C.F.R. § 110.4(b) (2002). The Commission's regulations also prohibit a political committee from accepting such a contribution. 11 C.F.R. § 110.9. These provisions function to

ensure that donors are not able to evade contribution limits by hiding the true source of their funds.

Here, the complainant presents no evidence to suggest that RDDC employees were not the true source of the funds they contributed to Herrera for Congress. The complainant relies entirely on suggestion, speculation, and coincidence. Commission precedent, however, has required the showing of specific facts that indicate that an employee was reimbursed for his contribution in order to present an allegation that a contribution has been made in the name of another.

In a series of Advisory Opinions, the Commission has made clear that an employer commits a violation of the Act by making a contribution in the name of another when there are specific facts to indicate that the employer is the "actual source" of its employee's contribution to a political committee as a result of its reimbursement of the employee for the employee's contribution. See, e.g., Advisory Opinions 1984-52, 1995-19, 1989-5, 1986-41.

For example, in Advisory Opinion 1984-52 the Commission relied on a Criminal Information filed against a corporation in a matter concerning a conduit contribution, coupled with the corporation's guilty plea to the charges therein, when it required the recipient committee to refund the contributions made by the corporation's employees. Advisory Opinion 1984-52. The corporation had paid the contributing employees additional salary bonuses to "cover for" the funds the employees had contributed. Id. The Commission found that the Information, coupled with the guilty plea, was "adequate factual basis" to conclude that a contribution in the name of another had occurred. Id.

Additionally, in Advisory Opinion 1995-19 the Commission relied on several specific facts supporting a newspaper reporter's suggestion that some contributors to the Indian-American Leadership Investment Fund (the "Fund") had been reimbursed for their contributions in finding that a contribution in the name of another may have occurred. Advisory Opinion 1995-19. By contrast, here the complainant makes general, unsupported allegations and wholly fails to provide what Commission precedent requires: specific facts to indicate that either RDDC or James Rhodes reimbursed the contributors for the contributions they made.

Second, Respondents contest the complainant's assertion that Respondents committed any violation of the Act or its implementing regulations when it accepted these contributions. At the time Herrera for Congress accepted the contributions, it had no reason to believe that any of the contributions at issue were not given from the personal funds of the individual contributor. A committee treasurer's responsibility under the Act is to "examin[e] all contributions received for evidence of illegality." 11 C.F.R. § 103.3(b). Here, as the complainant himself points out, the contributions that were given to Herrera for Congress from various individuals affiliated with RDDC were

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received over the course of almost twelve months. Compl. at 3. That several employees of a single company made contributions to the same congressional campaign over the course of almost a year hardly constitutes "evidence of illegality."

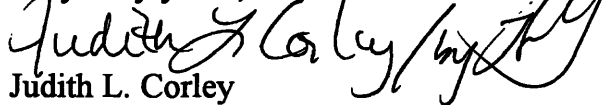
Third, Respondents challenge complainant's claim that Mr. Herrera and Herrera for Congress violated the Act by accepting a contribution from Free Cuba PAC. Compl. at 5. The Complaint asserts that because Free Cuba PAC made a contribution to Herrera for Congress in the week after it received two contributions from Aleyda and Jorge Mas, Free Cuba PAC made a contribution in the name of another. Compl. at 5. Again, complainant has no evidence to support this assertion.

Additionally, even if complainant's allegation were true, Respondents have committed no violation of the Act in this instance. When Herrera for Congress accepted the contribution from Free Cuba PAC, neither Respondent had any reason to believe that Free Cuba PAC was not a lawfully-created multi-candidate political committee or that Free Cuba PAC's contribution to Herrera for Congress was not in complete compliance with federal law. Free Cuba PAC had funds in its accounts before it received the contributions at issue, and, according to all information available to Respondents including the Commission's online database, was a fully-functioning unauthorized multi-candidate committee operating in accordance with the Act and Commission's rules. The Commission therefore should reject this claimed violation against Respondents as well.

Finally, Respondents feel compelled to point out that complainant has included in the Complaint several irrelevant and inflammatory references to previous, and entirely unrelated, allegations of wrongdoing that various parties have made against Mr. Herrera over the past year. These are not allegations of violations of campaign finance law, and are not related in any way to Mr. Herrera's candidacy for Congress. The inclusion of these statements serves no purpose other than to embarrass Mr. Herrera and highlight the complainant's irresponsible and flagrant misuse of the Commission's complaint process. The Commission should not tolerate such abuse of the Commission's time and resources.

For all the reasons asserted above, the Commission should not take further action on the Complaint in this matter, and should close the file.

Very truly yours,



Judith L. Corley

Rebecca H. Gordon

Counsel to Dario Herrera

JLC:rg